

REMARKS

The present application discloses and claims a child lounge. Independent claim 1 is amended, and dependent claim 5 is canceled without prejudice to the subsequent filing of a continuation application. Independent claims 8 and 14 are amended not for the purpose of further limiting the claims or for overcoming a specific rejection, but rather for clarity and consistency to denote that the harness assembly is movable between a first body-supporting position and second body-supporting position. Claims 1-4 and 6-19 are pending in this case.

Section 102

Claim 1 stands rejected under 35 U.S.C. 102(b) as being anticipated by Landwirth (US Patent 3,284,817). Applicant traverses Examiner's rejections of claim 1, and respectfully asserts that claim 1 is not anticipated by Landwirth.

According to the Federal Circuit, "[a]nticipation requires the disclosure in a single prior art reference of

each element of the claim under consideration."¹ The meaning of claim terms must be given not only their structural meaning, but also their functional meaning, and an Examiner is not permitted to dissect a claim and remove the functional limitations before determining anticipation. Moreover, functional limitations in claims must be afforded patentable weight by the Examiner for determining anticipation.²

In independent claim 1, Applicant claims an apparatus for holding and supporting an infant including a base having a proximal extremity, an opposing distal extremity, and an edge therebetween. The base has an inclined surface extending from the proximal extremity to the edge, and a generally horizontal surface extending from the edge to distal extremity. An elongate transverse body-supporting element is attached to the inclined surface adjacent the proximal extremity. A body-supporting harness assembly is attached to the base and located atop the inclined surface,

¹ W.L. Gore & Assocs. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983) (citing *Soundsciber Corp. v. United States* 360 F.2d 954, 960, 148 USPQ 298, 301 (Ct. Cl.), *adopted*, 149 USPQ 640 (Ct. Cl. 1996)), *cert. Denied*, 469 U.S. 851 (1984).

² See, e.g., *In re Ludtke*, 441 F.2d 660, 169 USPQ 563, 566 (C.C.P.A. 1971); *In re Atwood*, 354 F.2d 365, 148 USPQ 203, 210 (C.C.P.A. 1966); *In re Bisley*, 197 F.2d 355, 94 USPQ

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which is movable between a first body supporting position away from the general horizontal surface and toward the elongate transverse body-supporting element, and a second position toward the generally horizontal surface and away from the elongate transverse body-supporting element.

Landwirth fails to teach the subject matter set forth in independent claim 1. In particular, Landwirth does not teach a body-supporting harness assembly attached to the base and located atop an inclined surface thereof, which is movable between a first body supporting position away from a general horizontal surface of the base and toward an elongate transverse body-supporting element attached to the inclined surface adjacent a proximal extremity of the base, and a second position toward the generally horizontal surface and away from the elongate transverse body-supporting element. Absent these teachings, Landwirth is not a section 102(b) reference against Applicant's independent claim 1 because it does not teach of each and every element of Applicant's claimed invention as set forth in independent claim 1. The section 102(b) rejection of independent claim 1 is, therefore, believed to be moot and should be withdrawn, which action is earnestly solicited.

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Section 103

Independent claims 1, 8, and 14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US Patent 4,566,449) in view of Bowman (US Patent 5,439,008). Applicant traverses Examiner's rejections of claims 1, 8, and 14, and the rejections of the corresponding dependent claims thereof, and respectfully asserts that claims 1-5 and 14-17 are not obvious and unpatentable over Smith in view of Bowman.

In accordance with standard Patent Office practice, it is well understood that the Examiner has the burden of establishing a prima facie case of obviousness. (Manual of Patent Examining Procedure, M.P.E.P. 2142). Three basic criteria must be met to establish a prima facie case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or the references when combined) must teach or suggest all the claim limitations. According to the U.S. Court of Appeals

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for the Federal Circuit, "[t]he test for obviousness is not whether the features of one reference may be bodily incorporated into another reference. . . . Rather, we look to see whether combined teachings render the claimed subject matter obvious."³ Also, "[o]bviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination."⁴

Examiner asserts that Smith shows all the limitations of independent claims 1 and 14 except for the use of a body-supporting harness attached to the base and located atop the inclined surface, which is movable between a first body supporting position away from the general horizontal surface and a second position toward the generally horizontal surface. Examiner cites Bowman as providing the basing teaching of an infant supporting apparatus including a body-supporting harness movably attached thereto and positioned atop the inclined surface. Examiner concludes that it would have been obvious to provide the infant

³*In re Wood*, 599 F.2d 1032, 202 USPQ 171, 174 (C.C.P.A. 1979) (emphasis added) (citing *In re Bozek*, 416 F.2d 1385, 1390, 163 U.S.P.Q. 545, 549-50 (C.C.P.A. 1969); *In re Mapelsden*, 329 F.2d 321, 322, 141 USPQ 30, 32 (C.C.P.A. 1964)).

⁴ See *In re Geiger*, 815 F.2d 686, 2 USPQ 2d 1276, 1278 (Fed.

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supporting apparatus of Smith with a body-supporting harness assembly attached to the base and located atop the inclined surface, which is movable between a first body supporting position away from the general horizontal surface and a second position toward the general horizontal surface in order to ensure further that an infant supported thereon remains securely in place and also to allow for infants of varying sizes to be comfortably supported thereon. Applicant disagrees.

Smith teaches an elevated infant positioner 10 which is used to support an infant in either a prone position or a supine position. The positioner has a first flat surface 12 having a given angle that is preferably at least 30 degrees relative to the horizontal, and a second flat surface 20 having an angle that is less than the angle of the first flat surface 12, but that, as taught at column 4, line 14, is inclined nonetheless. An infant is placed on the first inclined surface 12 in either a prone or supine position. Smith teaches that placing the child in the supine position allows the back of the child and the head to be supported by the first inclined surface 12.

Cir. 1987).

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A child is placed in a prone position by placing the stomach of the child on the first flat surface 12 and allowing the head of the infant to be placed on the second flat surface 20. Smith teaches that the tapered extended arms 22 and 24 provide the dual functions of preventing lateral movement of the child while at the same time allow additional space for the child to move his hands over his head. The shoulder 28 associated with base portion 18 will also provide a limit to the vertical movement of the child while lying on the first flat surface 12.

Smith does not teach or suggest attaching a body-supporting harness to positioner 10, locating the body-supporting harness atop surface 12, and using the body-supporting harness assembly to secure a child in place. Smith does not teach or suggest attaching a body-supporting harness to positioner 10, locating the body-supporting harness atop surface 12, using the body-supporting harness assembly to secure a child in place, and configuring the body-supporting harness assembly to be movable between a first body-supporting position away from surface 20 (i.e., a lowered position) and a second body-supporting position toward surface 20 (i.e., a raised position).

There is no assembly in Smith that serves two functions, namely securing a child in place, and which is movable between a first position away from surface 20 and a second position toward surface 20. In fact, Smith does not teach a need to incorporate an adjustable body-supporting assembly because Smith teaches that the tapered extended arms 22 and 24 provide the dual functions of preventing lateral movement of the child positioned on positioner 10 in the prone position while at the same time allow additional space for the child to move his hands over his head, and that the shoulder 28 associated with base portion 18 will also provide a limit to the vertical movement of the child while lying on the first flat surface 12. "It is insufficient to establish obviousness that the separate elements of the invention existed in the prior art, absent some teaching or suggestion, in the prior art, to combine the elements."⁵ Because Smith does neither teaches of a body-supporting assembly that can be moved between different body-supporting positions, nor any need or desire to incorporate such an assembly, there is no motivation to combine the teachings of Bownman with the teachings of Smith, and one of ordinary skill would not be motivated to

⁵ *Arkie Lures, Inc. v. Gene Larew Tackle, Inc.*, 119 F.3d 953, 43 USPQ 2d 1294 (Fed. Cir. 1997).

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combine Bowman with Smith for the purpose of incorporating a body-supporting harness assembly with the positioner of Smith. Moreover, Bowman incorporates a support member having only a single inclined surface onto which a child is to be positioned. Bowman does not teach adjusting, or the need to adjust, its body-supporting harness assembly between different body-supporting positions for supporting a child and different positions on the inclined surface relative to another operative surface or object, such as a generally horizontal surface. Accordingly, the combination of Bowman with Smith is not a proper combination.

In independent claims 1, 8, and 14, Applicant claims, among other structural features, a base having an inclined surface and a generally horizontal surface, and a body-supporting harness assembly attached to the base and located atop the inclined surface, which is movable between a first body supporting position away from the general horizontal surface and a second body-supporting position toward the generally horizontal surface. Applicant's claimed harness assembly serves two functions, namely, it retains a child in place, and permits a child to be supported in different body-supporting positions relative to the generally horizontal surface. In the first body-

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supporting position of the harness assembly, the child can be placed on its back and secured in place with the harness assembly on the inclined surface. In the second body-supporting position, the child can be placed on its stomach and secured in place with the harness assembly such that the upper torso of the child's body is forced outwardly over the generally horizontal surface so as to confront generally horizontal surface, in which the child is then able to place his hands onto the generally horizontal surface and push himself up as illustrated. The claimed generally horizontal surface promotes this activity, namely, a child pushing himself up therefrom, which promotes strengthening of the muscles of the child's arms, neck, and back. Smith and/or Bowman do not contemplate these aspects.

An invention does not make itself obvious; that suggestion or teaching must come from the prior art. Examiner's conclusion that it would have been obvious to provide the positioner of Smith with the body-supporting harness assembly of Bowman does not come from Smith or from Bowman. There is no teaching or suggestion or motivation in Smith to use a body-supporting assembly as in Bowman, and one of ordinary skill would have no reason to combine

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the teachings of Bowman with Smith. There is no teaching in Smith providing any reason to use a body supporting harness, not only for securing a child in place, but also for providing different body-supporting positions for a child.

Accordingly, Appellant asserts that the Examiner erred rejecting claims 1, 8, and 14 as obvious under 35 U.S.C. 103(a) as unpatentable over Smith in view of Bowman, and further in view of Clute with respect to independent claim 8, that the combination of Smith and Brown is an improper combination, and that independent claims 1, 8, and 14 are patentable and nonobvious over the prior art of record in this case. Because claims 2-4, 6, and 7 depend from independent claim 1, dependent claims 9-13 depend from independent claim 8, and claims 15-19 depend from independent claim 14, and the independent claims 1, 8, and 14 are believed to be in condition for allowance, the section 103 rejections of dependent claims 2-4, 6, 7, 9-13, and 15-19 are believed moot and should be withdrawn. Furthermore, Applicant respectfully asserts that the dependent claims 2-4, 6, 7, 9-13, and 15-19 add additional novel features and are, a-fortiori, patentable. The cited but non-applied references have been noted and reviewed,

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but are submitted to be less relevant than the relied-upon references.

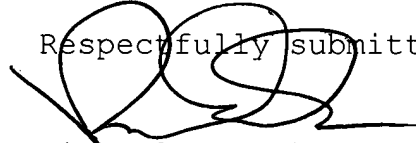
Applicant traverses each and every section 103 rejection set forth by the Examiner. Any particular rejection not specifically addressed is not to be deemed to be Applicant's agreement with, or Applicant's acquiescence to, Examiner's position or interpretation of the prior art. It is to be understood that Applicant's present response is for the purpose of overcoming the section 103 rejections of the subject matter set forth in the pending independent claims, in which the subject matter claimed therein is presently desirable to Applicant in the present application.

In view of the foregoing, Applicant submits that the invention disclosed and presently claimed in this application patentable and nonobvious over the prior art of record in this case. Therefore, allowance of the present application is in order and respectfully requested.

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Examiner's thorough and thoughtful consideration of
this application is sincerely appreciated.

Respectfully submitted,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

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